

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

AGGREGATE MINING PROCESS, LLC
AND REYNOLDS SHIPPING LLC,
Plaintiffs,

VS.

FRANK VEZER, INDIVIDUALLY,
FRANK VEZER D/B/A MACHINE
REPAIR INTERNATIONAL CANADA,
LTD., VEZER INDUSTRIAL
PROFESSIONALS, INC., VEZER
INDUSTRIAL PROFESSIONALS
CANADA, LTD.,
Defendants.

No. 6:18-cv-00186

MOTION TO WITHDRAW AS COUNSEL

COME NOW, E. Lee Haag, Diane K. Bounds, Adam F. Massey, Chelsea J. Lu, and Collin M. Weyand of the firm ADAMS AND REESE LLP, 1221 McKinney Street, Suite 4400, Houston, Texas 77010 (“Counsel”), and respectfully request this Court to allow their withdrawal as attorneys for Plaintiffs Aggregate Mining Process, LLC and Reynolds Shipping LLC (“Plaintiffs”), and would show the Court as follows:

I. Introduction

1. Plaintiffs sued Defendants Frank Vezer, Individually, Frank Vezer d/b/a Machine Repair International Canada, Ltd., Vezer Industrial Professionals, Inc., and Vezer Industrial Canada, Ltd. (“Defendants”) in McLennan County, Texas¹ for Breach of Contract, Tortious Interference, and Quantum Meruit on June 15, 2018. Plaintiff’s Petition centered Defendants’ failure to pay all amounts due and owing for services and materials rendered.

¹ Cause No. 2018-2189-4, *Aggregate Mining Process, LLC et al. v. Frank Vezzer, Individually et al.*; In the 170th District Court of McLennan County, Texas.

2. Defendant Vezer Industrial Professionals, Inc. (“VIP”) thereafter removed the case to this Court on diversity. After removal, Plaintiffs began preparing its First Amended Petition. On July 18, 2018, VIP filed its Motion to Dismiss on personal jurisdiction and venue grounds. As such, Plaintiffs also began preparing its Response to the Motion to Dismiss.

II.

Argument & Authorities

3. On July 31, 2018, the day before Plaintiff’s deadline to respond to the Motion to Dismiss, Plaintiffs cancelled representation and requested Counsel to complete all pending matters. Plaintiffs expressed they would retain substitute counsel. In response, Counsel communicated they would complete and file the Amended Petition and Response to Motion to Dismiss in this cause by end of day August 1, 2018. Additionally, Counsel communicated its representation of Plaintiffs would cease at 5:00 p.m. on August 1, 2018, per Plaintiffs’ request.

4. On August 1, 2018, Counsel filed the Amended Petition and Response to Motion to Dismiss on behalf of Plaintiffs. Counsel forwarded copies of both filings to Plaintiffs via electronic mail. At close of business, Counsel requested the name of Plaintiff’s substitute counsel; no response was received.

5. On August 6, 2018, Plaintiff Reynolds Shipping LLC, with Nathan Myers, owner and managing member of Plaintiff Aggregate Mining Process, LLC in copy, communicated their new counsel would contact Counsel that day in order to turn over all materials in Counsel’s possession.

6. On August 10, 2018, Counsel followed up with Plaintiffs via electronic mail, inquiring whether Plaintiffs engaged new counsel. Plaintiff Reynolds Shipping LLC provided a brief update but did not provide the name of new counsel.

7. On August 20, 2018, Plaintiff Reynolds Shipping LLC, with Plaintiff Aggregate Mining Process, LLC in copy, communicated to Counsel via email that Plaintiffs have retained Mr. Gary Lax as their attorney and Mr. Lax would retain an attorney in Texas for this matter on their behalf. The contact information of Mr. Lax, provided by Plaintiff Reynolds Shipping LLC, is as follows:

Mr. Gary Lax
211 Hobson Avenue, Suite C
Hot Springs, Arkansas 71913
(501) 321-1424 Office
gmlax@sbcglobal.net

8. That same day, on August 20, 2018, Counsel drafted an Agreed Motion to Withdraw (“Agreed Motion”) for Plaintiffs’ respective signatures, attached herein as Exhibit A. Counsel sent two electronic mail correspondences to Plaintiffs, one reflecting they mailed all materials to Mr. Lax, per Plaintiffs’ request, and another requesting Plaintiffs’ signatures to fully execute the Agreed Motion. While Plaintiff Reynolds Shipping LLC responded to the former email, no response was received from either Plaintiff regarding the Agreed Motion.

9. On August 24, 2018, Counsel followed up with Plaintiffs, again requesting full execution of the Agreed Motion. Counsel communicated that, even without Plaintiffs’ signatures, they would proceed to file the motion. The same day, Plaintiff Reynolds Shipping LLC, with Plaintiff Aggregate Mining Process, LLC in copy, responded that both would sign and forward a copy for filing.

10. On August 29, 2018, Counsel followed up with Plaintiffs, again requesting full execution of the Agreed Motion based on Plaintiff Reynolds Shipping LLC’s August 24th communication of its intent to sign and return the Agreed Motion. That same day, Plaintiff Reynolds Shipping LLC, with Plaintiff Aggregate Mining Process, LLC in copy, responded it

already signed the Agreed Motion and sent it to Plaintiff Aggregate Mining Process, LLC for its signature. Plaintiff Reynolds Shipping LLC communicated Plaintiff Aggregate Mining Process, LLC's managing member was out of town but would return on that Friday, August 31, 2018, and would get the Agreed Motion to Counsel on Monday, September 3, 2018.

11. As of the date of this Motion to Withdraw, Plaintiffs have not returned a signed copy of the Agreed Motion despite affirmations that they agreed to and stated they would return the fully executed Agreed Motion to Counsel. Nevertheless, Plaintiffs' act indicating their "unmistakable purpose to sever the relationship is enough" to terminate Plaintiffs' relationship with Counsel.²

12. While Plaintiffs expressly terminated representation by Counsel, the name of Plaintiffs' substitute Texas counsel is not known. The withdrawal of Counsel is not being done to delay this case. E. Lee Haag, Diane K. Bounds, Adam F. Massey, Chelsea J. Lu, and Collin M. Weyand of the firm ADAMS AND REESE LLP have delivered a copy of this Motion to Plaintiffs Aggregate Mining Process, LLC and Reynolds Shipping LLC. Counsel has notified Plaintiffs of their right to object to the Motion.

13. Per Plaintiffs' request, the contents of all files relating to this matter were mailed via FedEx to Mr. Lax at 211 Hobson Avenue, Suite C, Hot Springs, Arkansas 71913 on August 20, 2018 and successfully delivered on August 21, 2018.

14. Plaintiff Aggregate Mining Process, LLC's address is: 1205 South 8th Street, #269, Waco, Texas 76706.

15. Plaintiff Reynolds Shipping LLC's addresses are: 7116 N. Cynthia Street, McAllen, Texas 78504; 294 Cougar Terrace, Hot Springs, Arkansas, 71913.

² See *Hanlin v. Mitchelson*, 794 F.2d 834, 842 (2d Cir. 1986).

16. There are no pending settings or deadlines in this case as of the date of this Motion.³ As of the date of this Motion, no hearing has been set for the Motion to Dismiss.

III.
Conclusion

17. Plaintiffs' express termination of their relationship with Counsel warrants good cause for Counsel's representation to cease.

PRAYER

Wherefore, E. Lee Haag, Diane K. Bounds, Adam F. Massey, Chelsea J. Lu, and Collin M. Weyand respectfully request this Motion to Withdraw as Counsel to be granted in all respects along with such other and further relief as is just and proper. Should this Court deem a hearing on the Motion necessary, E. Lee Haag, Diane K. Bounds, Adam F. Massey, Chelsea J. Lu, and Collin M. Weyand respectfully request that this Court set Counsel's Motion for hearing and, after hearing, grant this Motion to Withdraw as Counsel in all respects along with such other and further relief as it just and proper.

³ See generally W.D. TEX. CIV. R. 7(f)(1) ("Absent leave of court, no further submissions of the motion are allowed" after a party's reply in support of a motion. *Id.*).

Respectfully submitted,

ADAMS AND REESE LLP

By: 

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**Attorneys for Plaintiffs,
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Reynolds Shipping LLC**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing instrument was forwarded to all attorneys of record by electronic service and email, on this the 24th day of September, 2018, as follows:

Via Electronic Service and Email to
Attorneys for Defendant Vezer Industrial Professionals, Inc.:

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